

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

IN RE WESTERN STATES WHOLESALE  
NATURAL GAS ANTITRUST  
LITIGATION,

MDL Docket No. 1566

Base Case No. 2:03-cv-01431-RCJ-PAL

## ORDER

THIS DOCUMENT RELATES TO:  
*ALL ACTIONS*

12 Before the Court is the parties' Stipulated Protective Order (Dkt. #1152), which the Court  
13 approved to facilitate the parties' discovery exchanges. This order is intended to remind counsel  
14 and the parties that there is a presumption of public access to judicial files and records. A party  
15 seeking to file a confidential document under seal must file a motion to seal and must comply  
16 with the Ninth Circuit's directives in *Kamakana v. City and County of Honolulu*, 447 F.3d 1172  
17 (9th Cir. 2006).

18        Although the court approved the blanket protective order, the parties have not shown, and  
19        Court has not found, that any specific documents are secret or confidential. The parties have not  
20        provided specific facts supported by affidavits or concrete examples to establish that a protective  
21        order is required to protect any specific trade secret or other confidential information under Rule  
22        26(c) of the Federal Rules of Civil Procedure or that disclosure would cause an identifiable and  
23        significant harm. The Ninth Circuit has held that there is a presumption of public access to  
24        judicial files and records, thus, parties seeking to maintain the confidentiality of documents  
25        attached to non-dispositive motions must show good cause exists to overcome the presumption  
26        of public access. *See Kamakana*, 447 F.3d at 1179. Parties seeking to maintain the secrecy of  
27        documents attached to dispositive motions must show compelling reasons sufficient to overcome  
28        the presumption of public access. *Id.* at 1180. Under *Kamakana*, the party designating

1 documents confidential should submit a memorandum of points and authorities presenting  
 2 articulable facts that identify the interests in favor of the documents' continued secrecy and  
 3 showing that these specific interests outweigh the public's strong interest in transparency.

4 In addition to *Kamakana*, the parties are required to follow the proper CM/ECF  
 5 procedures for any requests to file documents under seal. Special Order 109 requires the Clerk  
 6 of the Court to maintain in electronic form the official files for all cases filed on or after  
 7 November 7, 2005. The electronic record constitutes the official record of the court. Pursuant to  
 8 LR 10-5 of the Local Rules of Practice, attorneys must file documents under seal using the  
 9 Court's electronic filing procedures:

10 Unless otherwise permitted by statute, rule or prior Court order, papers filed with  
 11 the Court under seal shall be accompanied by a motion for leave to file those  
 12 documents under seal, and shall be filed in accordance with the Court's electronic  
 13 filing procedures. If papers are filed under seal pursuant to prior Court order, the  
 14 papers shall bear the following notation on the first page, directly under the case  
 number: "FILED UNDER SEAL PURSUANT TO COURT ORDER DATED  
 \_\_\_\_\_." All papers filed under seal will remain sealed until such time as  
 the Court may deny the motion to seal or enter an order to unseal them, or the  
 documents are unsealed pursuant to Local Rule.

15 *See LR 10-5(b).*

16 To streamline the process of sealing or unsealing documents as may be necessary, the  
 17 parties are instructed to electronically file the documents they want sealed as separate  
 18 attachments from the main document in CM/ECF. When portions of a filing may be sealed,  
 19 litigants must not combine their motion, memorandum of points and authorities, declaration,  
 20 and/or exhibits into one PDF document and then file that single PDF as the "main document" in  
 21 CM/ECF's document upload screen. This practice makes it impossible for the Clerk of the Court  
 22 to unseal any documents the Court finds should not be sealed because the docketing clerks  
 23 cannot separate the pages for sealing purposes. Instead, litigants should save *each* exhibit they  
 24 want sealed as a separate PDF document and then file each PDF in CM/ECF's document upload  
 25 screen as "attachments" to a main document. The Court's review of any motion requesting leave  
 26 to file under seal will be complicated by the parties' failure to properly file their exhibits through  
 27 CM/ECF.

28 ///

1 The shortcut of filing only one PDF inevitably causes additional work for the Court, the  
2 clerk's office, and litigants. Should leave to file under seal be granted for some but not all  
3 documents, the Court must then order litigants to refile the unsealed documents, rather than  
4 simply instructing the clerk's office to unseal the documents the court has found should not  
5 remain sealed. Counsel are responsible for instructing their staff regarding the correct  
6 procedures for filing documents under seal. For additional direction, the parties may refer to the  
7 updated procedures in *CM/ECF Version 4.0 Enhancements and Changes*, which is available on  
8 the Court's website, or contact the CM/ECF Helpdesk at (702) 464-5555.

9 || Accordingly,

10       **IT IS ORDERED** that the parties shall comply with LR 10-5(b), the Ninth Circuit's  
11       opinion in *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006), and the  
12       CM/ECF filing instructions stated herein with respect to filing documents under seal.

13 Dated this 23rd day of December, 2015.

Peggy A. Leen  
PEGGY A. LEEN  
UNITED STATES MAGISTRATE JUDGE